

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs November 2001

**ANTONIO L. SWEATT v. TENNESSEE DEPARTMENT OF
CORRECTION**

**Appeal from the Chancery Court for Davidson County
No. 00-2903-I Irvin H. Kilcrease, Jr., Chancellor**

No. M2001-01229-COA-R3-CV - Filed October 8, 2002

OPINION DENYING PETITION FOR REHEARING

BEN H. CANTRELL, P.J., M.S., delivered the opinion of the court, in which WILLIAM C. KOCH, JR. and WILLIAM B. CAIN, JJ., joined.

Antonio Sweatt has filed a Petition to Rehear, in which he asserts once again that he is not subject to the provisions of Tenn. Code. Ann. § 41-21-801, et seq., because in the present case he paid the initial filing fee of \$37.50 in full. He also notes that the chancellor never signed the Uniform Civil Affidavit of Indigency he submitted, and argues that the reason was that the chancellor knew that he was not proceeding in forma pauperis.

It appears to us, however, that if Mr. Sweatt wished to avoid the penalties that Tenn. Code. Ann. § 41-21-801, et seq., imposes upon those who have filed frivolous lawsuits or have failed to pay previously incurred court costs, he would have had to provide the court clerk with unambiguous assurances of his intention and his ability to pay the costs in the present case. Such assurances are normally provided through a reliable surety, or through the submission of a cash bond. Payment of the initial filing fee is not sufficient for this purpose.

As for the failure of the chancellor to sign the affidavit of indigency, we note that the Uniform Affidavit provides two alternate places for the judge's signature. A signature under the heading "ORDER ALLOWING FILING ON PAUPER'S OATH" allows the judge to signify that the plaintiff is indigent and is qualified to file on a pauper's oath. A signature under the heading "DETERMINATION OF NONINDIGENCY" allows the judge to signify that the plaintiff is not an indigent person, and thus does not qualify to file the case on a pauper's oath.

Mr. Sweatt's situation does not quite match either of these circumstances. His signature on the affidavit follows a sworn declaration that he is "financially unable to pay the costs of this action," but it appears to us that he is not entitled to proceed under a pauper's oath because of his prior frivolous lawsuits and unpaid court costs. Thus we cannot agree with Mr. Sweatt's argument as to the meaning of the chancellor's failure to sign the affidavit.

The Petition to Rehear is denied.

BEN H. CANTRELL, PRESIDING JUDGE, M.S.